ORIGINAL

(5)

No. 96-7171

IN THE UNITED STATES COURT OF THE UNITED STATES
October Term, 1996

RANDY G. SPENCER,

Petitioner,

ORIGINAL

v.

MICHAEL L. KEMNA and JEREMIAH W. (JAY) NIXON,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

REPLY BRIEF IN SUPPORT OF PETITION

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Argument

I. Respondents' brief in opposition fails to justify delaying the petitioner's habeas corpus challenge to his parole revocation until his entire sentence had expired.

In its Rule 15.2, this Court requires respondents' briefs in opposition to "address any perceived misstatements of fact or law set forth in the petition," and "admonish[es]" counsel to do so "in the brief in opposition, and not later."

In their brief in opposition (BIO), the respondents have failed to traverse one after another of the Petition's material propositions of fact or law. Respondents have failed to contest the insufficiency, under the due process clause of the Fourteenth Amendment, of the "evidence" of the parole violations now on the petitioner's record. Petition 3-7 & 11. They have failed to deny their own knowledge of the impending "mootness" of the petitioner's federal claims at the time they delayed his action. Petition 15-16. They have failed to challenge the nationwide importance of the issue of federal reviewability of probation and parole revocations. Petition 20. Petitioner has carried his burden of demonstrating the applicability of Rule 10(a).

A. The failure of the court below even to address the strategic delay of the petitioner's federal habeas corpus action is itself a basis for the exercise of certiorari jurisdiction, as well an admission that the conduct of the district-court proceeding will not bear scrutiny.

Petitioner agrees with the respondents that there is no answer to his argument that the court below "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power" when it refused to address the strategic delay issue in its opinion or in its order denying rehearing. Petition 12-14. Although the respondents make excuses for their own delay and the district court's, they do not even attempt to excuse the Eighth Circuit panel's absolute refusal to acknowledge one of the three points the petitioner briefed and argued. BIO 4-6. When the court with direct supervisory power over a district court will neither defend nor correct a practice such as waiting to rule on a parole revocation claim until the parolee's sentence has expired, he can only look to this Court for relief. Under Rule 15.2, the respondents have conceded this portion of the petitioner's first issue for review.

B. Respondents' generalizations about the length of habeas corpus actions and the "litigious" nature of Missouri prisoners do not excuse their manipulation of federal habeas corpus actions challenging parole revocations so as effectively to deny to the citizens of their state the privilege of the writ of habeas corpus.

As to the remainder of the first point, the respondents cite an extra-record "study" to the effect that "the mean processing time in federal district courts nationwide for habeas petitions containing more than three grounds is 359 days." BIO 4-5. From this "fact," the respondents draw the conclusions that "[i]t was impractical to fully litigate petitioner's claim before it became moot . . . ," and "[m]ootness was inevitable." BIO 5.

Respondents' argument ignores the fact that the bulk of federal habeas corpus petitions are in *no danger* of becoming moot during the time the district courts spend on them. Most federal habeas corpus petitions attack sentences of imprisonment for felonies, in which the petitioner's earliest conceivable release date is well into the next millennium.

Three (3) kinds of federal habeas corpus petitions do *not* fall into this category: those attacking (a) death sentences, (b) extraditions and transfers under the Interstate Agreement on Detainers, and (c) probation and parole revocations. Unlike challenges to sentences of imprisonment, all three of these categories call for disposition in such a manner as will not render the Great Writ a dead letter.

In respect to death sentences, even the respondents would not suggest that a district court should wait until after a petitioner has been executed to consider his petition. In respect to interstate transfers and probation or parole revocations, the respondents' aggregate figures provide no reason

for treating *them* on the same track as petitions challenging sentences of imprisonment—at least where, as here, the petition and the pleadings and correspondence from both sides apprise the district court of relevant time considerations. Whereas a stay can adequately preserve the rights of both parties in the execution and interstate transfer situations, only a swift disposition can do so in the probation or parole revocation situation, because a stay of the petitioner's release would aggravate rather than mitigate the violation of constitutional rights which is at issue.

It is neither "impractical" to dispose of such petitions in less than 359 days, nor "inevitable" that district courts will allow them to become moot. But if this Court agrees with the respondents that the petitioner and other citizens whose parole is revoked less than 359 days before their sentences expire have no right to federal habeas corpus relief for federal constitutional violations in the revocation process, it should say so—in order that these citizens may proceed to an action under 42 U.S.C. § 1983 without running afoul of Preiser v. Rodriguez, 411 U.S. 475 (1973), and without the need to exhaust their state remedies, as this petitioner did. App. 16-18, 39-40 & 83-84.

Respondents contend that the petitioner has somehow *waived* his right to complain about the district court's waiting until he had completed his entire sentence to address his parole revocation claims—and then to do so only by deeming them "moot." BIO 6. According to the respondents, the petitioner should have filed a petition for a writ of mandamus in the Eighth Circuit.

Petitioner filed timely pleadings objecting to both of the respondents' motions for enlargements of time. App. 28-29 & 33-36. When the respondents finally answered the district court's order to show cause—advising the district court that the petitioner was scheduled for re-release one month thence—the petitioner filed a reply that called the district court's attention to the time element the respondents had acknowledged and to the threat that his grievances would be held moot. App. 64-65 & 89. Petitioner wrote the district court's clerk "urgently requesting" him to

inform the district court of the time situation and the risk of mootness. App. 96 (emphasis in the original). It was reasonable for the petitioner to expect that once *both sides* had apprised the district court of the thirty-day window in which it could address his fully-briefed parole revocation claims before he would be re-released, the district court would do so.

Under the respondents' own authority (BIO 6), moreover, the petitioner did not have to use a *specific* vehicle in order to impress the district court with his concern about its failure to rule on his petition. Stewart v. Peters, 878 F.Supp. 1139, 1141-42 n.2 (N.D. Ill. 1995), was a death-penalty case in which the respondent complained that the district court had not denied relief soon enough, but had done nothing to notify the district court that the case was at issue after a remand from the Seventh Circuit. The court listed a mandamus petition as only one option—not even the preferred option—for calling its attention to the post-remand pleadings. It found that the respondent had suffered no prejudice from the delay.

In the instant case, the petitioner apprised the district court of his concern about the timing of the district court's disposition of his case. App. 64-65, 89 & 96. Petitioner suffered prejudice from the delay: he spent additional time in prison on account of an unconstitutional parole revocation, and he still has this official finding of a violent sex crime on his record.

The only defense for treating a habeas corpus petition attacking a probation or parole revocation in the same way that one treats a petition attacking an underlying conviction and sentence is that the petitioner can continue to litigate the revocation if he or she is re-paroled or otherwise released. But that is the very proposition the respondents and the court below deny. Respondents *admit* the petitioner's observation that as legislatures require prisoners to serve ever-increasing portions of their sentences in prison rather than on parole or conditional release, the average length of a parole term is decreasing, and his warning that if this Court allows their position to stand, it will

eviscerate the Fourteenth Amendment due process rights this Court has recognized in Morrissey v. Brewer, 408 U.S. 471 (1972), and Gagnon v. Scarpelli, 411 U.S. 776 (1973). Petition 20-21; Rule 15.2.

As a result of the State's violation of his rights, the petitioner has a parole revocation record for forcible rape and armed criminal action based on triple hearsay of a declarant who was voluntarily under the influence of crack cocaine at the time of the "rape" which the intervening declarants say she purported to perceive, recall, and narrate. Petitioner did not waive a preliminary hearing on the most serious element of the alleged parole violation: using a dangerous weapon. App. 67. Respondents attempt to justify their delay and the district court's by citing more extra-record numbers to the effect that Missouri prisoners are "litigious." BIO 5-6. In light of the undisputed facts of this case, it should come as no surprise if Missouri prisoners seek federal relief at a higher rate than those in other jurisdictions. This case illustrates why the Framers sought to guarantee to themselves and their posterity the protection of the Great Writ except in the limited circumstances the Constitution prescribes. U.S. Const. art. I, § 9, cl. 2.

Even if a large number of prisoner petitions are frivolous or otherwise insubstantial, that is no excuse for causing petitions like Randy Spencer's to become moot through no fault of the petitioner. See Haley v. Dormire, 845 F.2d 1498 (8th Cir. 1988)(fact that *same* prisoner had filed fifty previous lawsuits did not justify summary dismissal of eight more).

The time-sensitivity of this petitioner's claims appeared on the face of the petition, as the order to show cause reflected. App. 22. Both he and ultimately the respondents communicated this sensitivity to the district court. Respondents and the district court cannot excuse treating his petition in a manner that they *knew* would deny him the privilege of the writ of habeas corpus by pointing to *other* prisoner's filings.

Respondents complain of the petitioner's *Eighth-Circuit* appointed counsel's having sought extensions of time. BIO 6 n.1. By the time counsel filed these motions, the petitioner had not only been re-paroled on the conviction and sentence giving rise to his original custody; his sentence had completely expired. The damage directly associated with the respondents' and the district courts' delay had already occurred.

To allow a state attorney general's office and a district court to delay a prisoner's challenge to his parole revocation until his entire sentence has expired, then dismiss his claim and defend the dismissal as "moot," is not the "accepted and usual course of judicial proceedings," but a perversion of these proceedings. The court below failed to offer any excuse for the district court's behavior or to give any indication that it would not tolerate such behavior in the future. The judgment must be reversed.

II. Respondents' brief in opposition fails to resolve the conflict between the decision of the court below and the decisions of the Second, Seventh, and Ninth Circuits, because in this case—as in the ones the petitioner cited or alluded to in his petition before this Court—the aggrieved citizens suffered non-speculative, prejudicial collateral consequences as a result of the official acts from which they sought federal habeas corpus relief.

Respondents attempt to avoid the conflict among the circuits that *the court below itself acknowledged* by asserting, without citation, that Missouri's state statutes and regulations on parole do not *require* the Board of Probation and Parole to deny the petitioner *future* parole release because of the unconstitutional revocation for which he sought relief from his country's courts. Respondents even suggest that the Board will not take this revocation into account in making any future release decision relating to the petitioner. In making these assertions, the respondents ignore all collateral

consequences *except* future *parole release* decisions by the *Missouri* Board of Probation and Parole. BIO 7. But that is not the law.

A. Under Missouri and federal law, the collateral consequences of the petitioner's unconstitutional parole revocation are not speculative, but gravely prejudicial.

Petitioner's outstanding parole revocation for forcible rape and armed criminal action exposes him to enhanced sentences for a wide variety of crimes, as well as to impeachment whenever he is called as a witness in a civil or criminal matter. These prejudicial collateral consequences flow from well-established rules of Missouri law and of federal law to the extent it is observed in Missouri.

Under subsection 4 of Mo. Rev. Stat. § 558.018 (Supp. 1996), a court of the State of Missouri "shall" sentence a citizen to life imprisonment *with* eligibility for parole but *without* eligibility for *discharge* from parole if it finds that he is a "predatory sexual offender." It provides that forcible rape is one of the prior offenses for such a finding. Subsection 5 defines a "predatory sexual offender" to include a person who "[h]as previously committed an action which would constitute an offense listed in subsection 4 of this section, whether or not the act resulted in a conviction." (Emphasis supplied.) As a quasi-judicial finding of guilt of forcible rape, the parole revocation Randy Spencer has suffered would therefore give the prosecution a prima facie case for subjecting him to a sentence of life imprisonment without eligiblity for discharge from parole if he were were accused of any of the offenses listed in subsection 4. These include attempted statutory rape, for which the sentence would otherwise be ten to twenty years.[1]

[1]Mo. Rev. Stat. § 557.021.3(1)(a)(1994)(classification of substantive offense), § 564.011.3(1)(1994)(attempts), and § 566.032 (Supp. 1996)(defining and punishing substantive offense).

The Missouri Supreme Court has allowed the prosecution to adduce evidence of a parole violation to prove a "substantial history of serious assaultive criminal convictions" in the penalty phase of a capital trial. State v. Nave, 694 S.W. 2d 729, 738 (Mo. 1985)(en banc), cert. denied, 475 U.S. 1098 (1986). Under Nave, such "evidence" would be admissible to negate the statutory mitigating circumstance of the absence of a "significant history of prior criminal conduct." Mo. Rev. Stat. § 565.032.3 (1994).

Under Missouri law an opponent may use a probation or parole violation to impeach a witness—including the defendant in a criminal trial.[2] Under Missouri law, as under the Federal Rules of Evidence, a finding of a parole violation for forcible rape and armed criminal action would be admissible to prove "character or a trait of character" where it is "an essential element of a charge, claim, or defense."[3] It would provide a good-faith basis for asking a reputation witness whether he or she was aware that the petitioner had had his parole revoked for forcible rape and armed criminal action.[4]

State probation or parole revocations "count" under the Federal Sentencing Guidelines. E.g., United States v. Renfrew, 957 F.2d 525, 526 (8th Cir. 1991). In assessing a defendant's criminal

[2]State v. Comstock, 647 S.W. 2d 163, 164-66 (Mo. Ct. App. 1983)(probation violation), distinguishing State v. Newman, 568 S.W. 2d 276, 278-82 (Mo. Ct. App. 1978)(disapproving impeachment on parole violation as part of questioning about details of prior crimes and bad acts other than fact and basis of parole violation).

[3]Fed. R. Evid. 405(b); Durbin v. Cassalo, 321 S.W.2d 23, 25-26 (Mo. Ct. App. 1959)(collecting cases not even involving quasi-judicial finding).

[4]Fed. R. Evid. 405(a); State v. Sweet, 796 S.W.2d 607, 614 (Mo. 1990)(en banc), cert. denied, 499 U.S. 1019 (1991).

history, federal courts may consider allegations of uncharged conduct that is not even criminal, and of criminal conduct concerning which the court or the prosecution dismissed the relevant counts.[5]

When a federal court finds that actual convictions do not adequately reflect the seriousness of a defendant's criminal history, the Sentencing Guidelines authorize an upward departure on the basis of "prior similar misconduct established by a civil adjudication or by a failure to comply with administrative orders." U.S.S.G. § 4A1.3.[6] Petitioner's parole revocation would certainly be offered under the Guidelines.

As a matter of Missouri law, Randy Spencer cannot prevent the Board's revocation of his parole from coming back to affect his legal rights. If he is accused of *attempting* to have *consensual* sex with a thirteen-year-old, he is exposed to life imprisonment on account of the unconstitutional parole revocation for which the lower courts have refused to provide him a day in court. If he is accused of first-degree murder, the prosecution can use it as evidence on the basis of which he could be sentenced to death.

On the other hand, if the petitioner leads a blameless life, but is the victim of a crime or tort, the wrongdoer can—in a broad variety of circumstances—introduce this parole revocation to discourage a jury from vindicating the petitioner's rights as an honest citizen. It requires no "speculation" to arrive at either set of conclusions: it is the law.

B. United States v. Parker demonstrates that the decision of the court below conflicts with a decision of the Second Circuit.

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[5]U.S.S.G. § 1B1.4; United States v. Snover, 900 F.2d 1207, 109-10 (8th Cir. 1990), citing United States v. Williams, 879 F.2d 454, 457 (8th Cir. 1989).

[6]See United States v. DeFilippis, 950 F.2d 444, 447-49 (7th Cir. 1991)("wealth of information" about uncharged conduct in presentence report); United States v. Keys, 859 F.2d 983, 989-91 (10th Cir. 1990)(prison disciplinary report).

Respondents seek to distinguish United States v. Parker, 952 F.2d 31 (2d Cir. 1991)(per curiam), by arguing that the Second Circuit relied on "New York statutory law" in finding that Parker's federal probation violation was "likely to effect future parole consideration." BIO 7-8. As the petitioner has pointed out (at 7-9 of this reply), under Missouri law and federal law, his unconstitutional parole revocation is admissible to his substantial prejudice in various civil and criminal proceedings. Petitioner may have occasion to travel to New York or some other state where a past parole revocation from another jurisdiction would have even more damaging effects on his legal rights than this one has in Missouri.

More fundamentally, *before* the Parker court *reached* the specific collateral consequences the prisoner faced under *New York* state law, it rejected the Government's argument that Lane v. Williams, 455 U.S. 624 (1982), precluded it from reaching the merits of her case. It discussed decisions from the Fifth, Seventh, Ninth, and District of Columbia Circuits applying Lane, and concluded that they had viewed as "dispositive" the distinction between attacking only one's sentence, on the one hand, and attacking either the underlying conviction or the probation or parole violation, on the other. Parker, 952 F.2d at 33, citing D.S.A. v. Circuit Court Branch 1, 942 F.2d 1143 (7th Cir. 1991); Robbins v. Christensen, 904 F.2d 492 (9th Cir. 1990); United States v. Spawr Optical Research, Inc., 864 F.2d 1467 (9th Cir. 1988), cert. denied, 493 U.S. 809 (1989); United States v. Maldonado, 735 F.2d 809 (5th Cir. 1984); and United States v. Cooper, 725 F.2d 756 (D.C. Cir. 1984)(per curiam).

In Parker the Government appeared to have interpreted dictum in a footnote to an Illinois case that this Court cited in Lane, 455 U.S. at 632 & n.13, to mean that a record of parole violations cannot be a collateral consequence for the purpose of mootness inquiries. The Second Circuit replied:

> In cases where a convict directly attacks his or her conviction or finding of parole violation, courts have, as a general rule, considered a wider spectrum of collateral effects in deciding whether a case is moot. Thus, potentially negative effects on testimonial credibility, future bail adjustments, future criminal sentences, and potential employment discrimination have been found sufficiently injurious to sustain the vitality of a controversy.

952 F.2d at 33 (emphasis supplied), citing D.S.A., 942 F.2d at 1148-50; Robbins, 904 F.2d at 494-95; and Maldonado, 735 F.2d at 812-13. Finding that the federal parole violation in question was "likely to influence the state parole authority to [the prisoner's] detriment," the Second Circuit held that her claim was not moot, and addressed the merits of her attack on the violation. Id. at 33-34.

Respondents do not argue that this Court should deny relief under Lane v. Williams. BIO v & 7-8. Like the petitioner's in Parker, this petitioner's case is fundamentally distinguishable from it. In Lane, two (2) Illinois prisoners, Williams and Southall, sought to challenge their *underlying sentences* based on pleas of guilty; their intervening release on parole, revocation, return to custody, re-parole, and complete discharge from custody were *collateral* to their attack on the voluntariness of their pleas. This Court recognized this distinguishing fact when it said: "[Williams and Southall] have never attacked, on either substantive or procedural grounds, the finding that they violated the terms of their parole." 455 U.S. at 633.

Unlike the prisoners in Lane, Randy Spencer does not question the legitimacy of the term of parole supervision to which the State of Missouri subjected him. Instead, he maintains that when the State of Missouri has revoked his parole in violation of the Constitution of the United States, and when he has exhausted his state-court remedies for the State's constitutional violations, he has a right to a judicial remedy in the courts of the United States.

Respondents cannot reconcile Parker with the decision of the court below. If that court had either applied the Second Circuit's reading of Lane or engaged in a realistic appraisal of the effect of

this parole revocation on *this* petitioner's ability to protect himself against private wrongs or public accusations, it would have reversed the district court's dismissal as moot.

C. Robbins v. Christianson demonstrates that the decision of the court below conflicts with a decision of the Ninth Circuit.

Respondents attempt to avoid the conflict between the Eighth Circuit's decision in the petitioner's case and the Ninth Circuit's in Robbins by purporting to "distinguish" it because the collateral consequence involved in Robbins—"the effect of a finding of drug use on future employment"—was "not raised or addressed by petitioner in the court below." BIO 8. Like their response to Parker, this effort is insubstantial, and the conflict among the circuits stands.

Robbins involved a prison disciplinary proceeding in which federal corrections officials gave Robbins a conduct violation, transferred him from a halfway house to a prison camp, and denied him sixty (60) days of good-time credit on the basis of a single urine sample they believed to show the use of illegal drugs. They failed to provide him a copy of the conduct violation report until the time to seek administrative review had expired. Robbins filed a federal habeas corpus action, and while the action was pending, he completed the sentence for tax evasion he had been serving at the time of the urine test. The district court dismissed his action as moot. 904 F.2d at 493-94.

The Ninth Circuit held that this Court's holding in Lane did not apply because Robbins was attacking the disciplinary action rather than his underlying conviction or sentence. 904 F.2d at 494-95. Only after reaching this conclusion of law—diametrically opposed to the Eighth Circuit's on the same point in the instant case—did it consider what collateral consequences would keep a claim alive once a person's sentence has expired.

The Ninth Circuit discussed, first, the effect of an official finding of illegal drug use on the petitioner's sentencing exposure if he were charged with a federal drug offense. It cited the Federal

Sentencing Guidelines as "permit[ting] a court to impose more restricted sentences and release conditions on those defendants who have histories of substance abuse." U.S.S.G. § 5B1.4(b)(23) & § 5H1.4. It noted the upward departure that U.S.S.G. § 4A1.3(c) permits on the basis of "prior civil adjudications or a defendant's failure to comply with administrative orders." It noted that a prison disciplinary record could be the basis for such a finding. 904 F.2d at 495, citing United States v. Keys, 899 F.2d 983, 989-90 (10th Cir. 1990).

In Evitts v. Lucey, 469 U.S. 387, 391 n.4 (1985), this Court held that a habeas corpus attack on a criminal conviction did not become moot on the expiration of the sentence challenged, because of the threats that a petitioner's conviction will be used "to impeach testimony he might give in a future proceeding" and "to subject him to persistent felony offender prosecution." Relying on Evitts, the Ninth Circuit reasoned that it was better to examine the petitioner's grievance sooner rather than later. 904 F.2d at 495-96, citing Sibron v. New York, 392 U.S. 40, 56 (1968).

Only after having developed a sufficient basis for reversing the district court did the Ninth Circuit discuss the petitioner's second collateral consequence, relating to employment opportunities. In a single paragraph, the Ninth Circuit held that it "could not fully discount" this risk. It then returned to the general odium attached to illegal drug use—a factor equally applicable to impeachment, sentencing, and employment. 904 F.2d at 496.

Consequently, Robbins stands foursquare in conflict with the opinion of the court below. Like Parker, D.S.A., and the cases they cite, it rejects the notion that Lane bars federal habeas corpus consideration of an official finding of wrongdoing other than a criminal conviction if the subject of the finding is no longer in prison pursuant to the finding he or she seeks to attack. Respondents cannot avoid the conflict by pointing to a single paragraph in the Robbins opinion or by niggling about the fact that the Eighth Circuit itself, rather than the petitioner, was the first to cite it.

D. D.S.A. v. Circuit Court Branch 1 demonstrates that the decision of the court below conflicts with a decision of the Seventh Circuit.

Respondents point out that the petitioner's *question and argument heading* refer to the Seventh Circuit as well as the Second and the Ninth. BIO 7. In the leading case that canvasses the conflicting decisions on this question, D.S.A. v. Circuit Court Branch 1, 942 F.2d 1143 (7th Cir. 1991), the Seventh Circuit explains that under this Court's decisions such as Evitts v. Lucey, the existence of an official act other than a conviction of crime imputing guilt to a citizen is a sufficient collateral consequence to defeat a claim of mootness. Id. at 1148-49. The Seventh Circuit cited several opinions from the Fourth, Ninth, Tenth, and Eleventh Circuits citing both sentence-enhancement and impeachment uses of convictions as overcoming the defense of mootness. 942 F.2d at 1149 n.9.[7]

Like the instant case, D.S.A. did not involve a conviction of crime: whereas this case involves a parole revocation for forcible rape, armed criminal action, and possession of crack cocaine, D.S.A. involved a Wisconsin juvenile adjudication that an eleven-year-old had participated in the murder of a nine-year-old. In D.S.A., the Seventh Circuit took account of the gravity of the conduct. 942 F.2d at 1149-50.

Even when one limits one's view to Missouri law, one must agree that the Board of Probation and Parole's finding that the petitioner had committed forcible rape and armed criminal action would have both of the collateral consequences on which the Seventh Circuit focussed in holding D.S.A.'s habeas corpus petition to present a live claim. It also noted that under Wisconsin law, the juvenile

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[7]Citing White v. White, 925 F.2d 287, 290 (9th Cir. 1991); Sanchez v. Mondragon, 858 F.2d 1462, 1463 n.1 (10th Cir. 1988); Broughton v. North Carolina, 717 F.2d 147, 149 (4th Cir. 1983); Malloy v. Purvis, 681 F.2d 736, 740 (11th Cir. 1982)(Wisdom, J.), quoting Harrison v. Indiana, 597 F.2d 115, 118 (7th Cir. 1979).

adjudication "could be used in a presentence report to increase a subsequent sentence." 942 F.2d at 1150. In Missouri, it is the Board of Probation and Parole staff that *prepares* presentence investigation reports. Mo. Rev. Stat. § 217.760 (1994). The law is not so naïve as to expect this staff to omit the violation report from which this petitioner seeks redress.

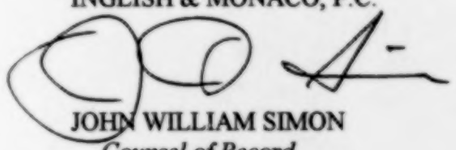
D.S.A. is not merely a citation for another circuit with which the court below is in conflict; it provides powerful reasons why this Court should resolve the conflict in the petitioner's favor. The judgment must be reversed.

Conclusion

WHEREFORE, the petitioner renews his prayer that the Court grant the pending petition; reverse the judgment of the court below; and remand with directions to remand to the district court for the purpose of granting the writ and ordering the Board of Probation and Parole to expunge the petitioner's record of the violation of his parole by committing forcible rape, armed criminal action, and possession of a controlled substance.

Respectfully submitted,

INGLISH & MONACO, P.C.



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CERTIFICATE OF SERVICE

I certify that I am a member of the Bar of this Court, and that on this nineteenth day of March, 1997, I deposited in the mails, first-class postage prepaid, a true and correct copy of the within reply brief in support of petition to counsel of record for both respondents, as follows:

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Respectfully submitted,

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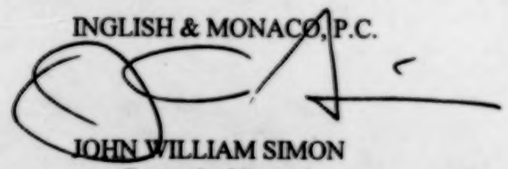

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